

**§ 159a.25 Systematic review.**

(a) *Assistance to the Archivist of the United States.* The Secretary of Defense and the Secretaries of the Military Departments shall designate experienced personnel to assist the Archivist of the United States in the systematic review of classified information. Such personnel shall:

(1) Provide guidance and assistance to National Archives and Records Administration (NARA) employees in identifying and separating documents and specific categories of information within documents that are deemed to require continued classification; and

(2) Refer doubtful cases to the DoD Component having classification jurisdiction over the information or material for resolution.

(b) *Systematic Review Guidelines.* The Director of Security Plans and Programs, ODUSD(P), in coordination with DoD Components, shall review, evaluate, and recommend revisions of DoD Directive 5200.30<sup>9</sup> at least every 5 years.

(c) *Systematic Review Procedures.* (1) Except as noted in this subsection, classified information transferred to the NARA that is permanently valuable will be reviewed systematically for declassification by the Archivist of the United States with the assistance of the DoD personnel designated for that purpose under paragraph (a) of this section as it becomes 30 years old. Information concerning intelligence (including special activities), sources, or methods created after 1945, and information concerning cryptology created after 1945, accessioned into the NARA will be reviewed systematically as it becomes 50 years old. Such information shall be downgraded or declassified by the Archivist of the United States under E.O. 12356, the directives of the ISOO, and DoD Directive 5200.30.

(2) All DoD classified information that is permanently valuable and in the possession or control of DoD Components, including that held in Federal Records Centers or other storage areas, may be reviewed systematically for declassification by the DoD Component exercising control of such information. Systematic declassification review

conducted by DoD Components and personnel designated under paragraph (a) of this section shall proceed as follows:

(i) Information over which the Department of Defense exercises exclusive or final original classification authority and that under DoD Directive 5200.30, the responsible reviewer determines is to be declassified, shall be marked accordingly.

(ii) Information over which the Department of Defense exercises exclusive or final original classification authority that, after review, is determined to warrant continued protection shall remain classified as long as required by national security considerations.

(3) Classified information over which the Department of Defense does not exercise exclusive or final original classification authority encountered during DoD systematic review may not be declassified unless specifically authorized by the agency having classification jurisdiction over it.

(d) *Systematic Review of Classified Cryptologic Information.* Notwithstanding any other provision of this part, systematic review and declassification of classified cryptologic information shall be conducted in accordance with special procedures developed in consultation with affected agencies by the Director, National Security Agency/Chief, Central Security Service, and approved by the Secretary of Defense under E.O. 12356 and DoD Directive 5200.30.

(e) *Systematic Review of Intelligence Information.* Systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods shall be in accordance with special procedures to be established by the Director of Central Intelligence after consultation with affected agencies.

**§ 159a.26 Mandatory declassification review.**

(a) *Information Covered.* Upon request by a U.S. citizen or permanent resident alien, a Federal agency, or a State or local government to declassify and release such information, any classified information (except as provided in

<sup>9</sup>See footnote 1 to § 159a.3.

paragraph (b) of this section) shall be subject to review by the originating or responsible DoD Component for declassification in accordance with this section.

(b) *Presidential Information.* Information originated by a President, the White House staff, committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President is exempt from the provisions of this section.

(c) *Cryptologic Information.* Requests for the declassification review of cryptologic information shall be processed in accordance with the provisions of DoD Directive 5200.30.

(d) *Submission of Requests for Mandatory Declassification Review.* Requests for mandatory review of DoD classified information shall be submitted as follows:

(1) Requests shall be in writing and reasonably describe the information sought with sufficient particularity to enable the Component to identify documents containing that information, and be reasonable in scope; for example, the request does not involve such a large number or variety of documents as to leave uncertain the identity of the particular information sought.

(2) Requests shall be submitted to the Office of the Assistant Secretary of Defense (Public Affairs) (ASD(PA)) (entry point for OSD records), the Military Department, or other Component most concerned with the subject matter that is designated under 32 CFR part 285 to receive requests for records under the Freedom of Information Act. These offices are identified in appropriate parts of title 32 of the Code of Federal Regulations for each DoD Component.

(e) *Requirements for Processing.* Unless otherwise directed by the ASD(PA), requests for mandatory review shall be processed as follows:

(1) The designated office shall acknowledge receipt of the request. When a request does not satisfy the conditions of paragraph (d)(1) of this section, the requester shall be notified that unless additional information is provided or the scope of the request narrowed, no further action will be undertaken.

(2) DoD Component action upon the initial request shall be completed within 60 days (45 working days). If no determination has been made within 60 days (45 working days) of receipt of the request, the requester shall be notified of his right to appeal and of the procedures for making such an appeal.

(3) The designated office shall determine whether, under the declassification provisions of this part, the requested information may be declassified, and, if so, make such information available to the requester, unless withholding is otherwise warranted under applicable law. If the information may not be released in whole or in part, the requester shall be given a brief statement as to the reasons for denial, notice of the right to appeal the determination within 60 days (45 working days) to a designated appellate authority (including name, title, and address of such authority), and the procedures for such an appeal.

(4) When a request is received for information classified by another DoD Component or an agency outside the Department of Defense, the designated office shall:

(i) Forward the request to such DoD Component or outside agency for review together with a copy of the document containing the information requested, when practicable and when appropriate, with its recommendation to withhold any of the information;

(ii) Notify the requester of the referral unless the DoD Component or outside agency to which the request is referred objects to such notice on grounds that its association with the information requires protection; and

(iii) Request, when appropriate, that the DoD Component or outside agency notify the referring office of its determination.

(5) If the request requires the rendering of services for which fees may be charged under title 5 of the Independent Offices Appropriation Act in accordance with DoD Instruction 7230.7<sup>10</sup> the DoD Component may calculate the anticipated amount of fees to be charged and ascertain the requester's willingness to pay the allowable

<sup>10</sup> See footnote 1 to § 159a.3

charges as a precondition to taking further action upon the request.

(6) A requester may appeal to the head of a DoD Component or designee whenever that DoD Component has not acted on an initial request within 60 days or the requester has been notified that requested information may not be released in whole or in part. Within 30 days after receipt, an appellate authority shall determine whether continued classification of the requested information is required in whole or in part, notify the requester of its determination, and make available to the requester any information determined to be releasable. If continued classification is required under this part, the requester shall be notified of the reasons therefor. If so requested, an appellate authority shall communicate its determination to any referring DoD Component or outside agency.

(7) The ASD(PA) shall act as appellate authority for all appeals regarding OSD, OJCS, and Unified Command records.

(f) *Foreign Government Information.* Requests for mandatory review for the declassification of foreign government information shall be processed and acted upon under the provisions of this section subject to § 159a.76(c).

(g) *Prohibition.* No DoD Component in possession of a document shall in response to a request under the Freedom of Information Act or this section refuse to confirm the existence or nonexistence of the document, unless the fact of its existence or nonexistence would itself be classifiable under this part.

(h) *Restricted Data and Formerly Restricted Data.* Any proposed action on a request, including requests from Presidential libraries, for DoD classified documents that are marked "Restricted Data" or "Formerly Restricted Data" must be coordinated with the Department of Energy.

#### **§ 159a.27 Declassification of transferred documents or material.**

(a) *Material Officially Transferred.* In the case of classified information or material transferred under statute, E.O., or directive from one department or agency or DoD Component to another in conjunction with a transfer of

functions, as distinguished from transfers merely for purposes of storage, the receiving department, agency, or DoD Component shall be deemed to be the original classifying authority over such material for purposes of downgrading and declassification.

(b) *Material Not Officially Transferred.* When a DoD Component has in its possession classified information or material originated in an agency outside the Department of Defense that has ceased to exist and such information or material has not been transferred to another department or agency within the meaning of paragraph (a) of this section, or when it is impossible to identify the originating agency, the DoD Component shall be deemed to be the originating agency for the purpose of declassifying or downgrading such information or material. If it appears probable that another department, agency, or DoD Component may have a substantial interest in the classification of such information, the DoD Component deemed to be the originating agency shall notify such other department, agency, or DoD Component of the nature of the information or material and any intention to downgrade or declassify it. Until 60 days after notification, the DoD Component shall not declassify or downgrade such information or material without consulting the other department, agency, or DoD Component. During this period, the other department, agency, or DoD Component may express objections to downgrading or declassifying such information or material.

(c) *Transfer for Storage or Retirement.* Whenever practicable, classified documents shall be reviewed for downgrading or declassification before they are forwarded to a Records Center for storage or to the NARA for permanent preservation. Any downgrading or declassification determination shall be indicated on each document by markings as required by subpart E of this part.

#### **§ 159a.28 Downgrading.**

(a) *Automatic Downgrading.* Classified information marked for automatic downgrading in accordance with this or